

## **REMARKS**

Claims 2, 5, 7-11, 13-15, 18, 20-22, 24, 28-31, 33, 37-43 and 70-73 are pending. Applicants have herein above canceled claims 8, 21, 30, 39, 42 and 70-73 without prejudice to applicants' right to pursue the subject matter of these claims in a future continuation application. Claims 9, 22, 31, 38 and 43 have been rewritten into independent form to incorporate the language of previously pending independent claims from which they depended respectively, i.e. claims 70, 71, 72, 73 and 39. Claims 2, 5, 10, 11, 13-15, 18-22, 24, 28-29, 33, and 40-41 have been amended to recite correct dependencies from the new independent claims. No new matter is presented by this Amendment. Accordingly, claims 2, 5, 7, 9-11, 13-15, 18, 20, 22, 24, 28-29, 31, 33, 37-38, 40-41 and 43 will be pending. Reconsideration and allowance of this application is respectfully requested.

### **Substance of July 15, 2003 Examiner's Interview**

Applicants wish to thank the Examiner and his supervisor Examiner Gary Nickol for graciously agreeing to a telephone interview held on July 15, 2003.

The July 15, 2003 telephone interview related to applicants' proposed amendment to recite a human subject in pending claims 9, 22, 31, 38, which previously recited a mammalian subject, and claim 43, which originally had depended on claim 39, which recited a method of preventing heart failure, and was proposed to be amended to recite treating heart failure, as suggested by the Examiner in an earlier June 3, 2003 telephone interview. These claims had been objected to in a July 1, 2003 Advisory Action. In an effort to place these claims into better condition for allowance, applicants proposed to amend these previously dependent claims as independent claims. The Examiner indicated that the claims would not be entered because prosecution of the application was closed and the proposed claims would require consideration and examination under different statutes, as well as new searches. With respect to the objections of the previously dependent claims, the Examiner indicated that he had not reviewed the base claims to determine whether the proposed independent claims would be allowable. The Examiner suggested that an RCE be filed to enter the proposed claims.

### **Advisory Action**

The July 1, 2003 Advisory Action states that applicants' previous reply has overcome the rejections under 35 U.S.C. § 112, second paragraph, 35 U.S.C. § 112, first paragraph, and 35 U.S.C. § 102(a), but that the rejection of April 9, 2003 under 35 U.S.C. § 102(b) is maintained for reasons of record. Claims 9, 11, 14, 22, 29, 31, 38, 41, and 43 were objected to and claims 2, 5, 7, 8, 10, 13, 15, 18, 20, 21, 24, 28, 30, 33, 37, 39, 40 and 42 were rejected. Claims 70-73 were not listed as rejected or objected, but the cancellation of these claims hereinabove renders clarification on their status moot.

### **Rejections under 35 U.S.C. § 102(b)**

#### **Kobayashi et al.**

Applicants respectfully traverse the Examiner's rejection of presently pending Claims 2, 5, 7, 10, 13, 15, 18, 20, 24, 28, 33, 37, 39, and 40 under 35 U.S.C. § 102(a) over Kobayashi et al. (J. Surgical Res. 2000 Apr; 89(2):189-95) and maintain that these claims are not anticipated by Kobayashi et al.

Objected claims 9, 22, 31, 38, and 43 recite that the subject/mammal is a human. Applicants have amended these claims into independent form.

Kobayashi et al. does not disclose each and every element of the claimed methods as recited in presently pending independent claims 9, 22, 31, 38 and 43 and all claims dependent thereon by virtue of their dependency on these independent claims.

Kobayashi et al. do not isolate autologous mononuclear cells from the bone marrow of a human, as required by the claimed methods. Rather, Kobayashi et al. collect bone marrow from rat femur and tibia. Kobayashi et al. do not isolate autologous mononuclear cells from the rat bone marrow cells. Since Kobayashi et al. do not teach each and every element of the claimed methods, Kobayashi et al. do not anticipate presently pending Claims 9, 22, 31, 38 and 43 and all claims dependent thereon, i.e. Claims 2, 5, 7, 10, 11, 13, 15, 18, 20, 24, 28, 33, 37, 39, and 40.

Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 102(a).

In view of the foregoing amendments and remarks, it is firmly believed that the subject invention is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

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